

1984 S.C. Op. Atty. Gen. 177 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-69, 1984 WL 159876

Office of the Attorney General

State of South Carolina

Opinion No. 84-69

June 20, 1984

*1 Colonel P. L. Meek

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Dear Colonel Meek and Mr. Rosen:

You have asked us to review a previous opinion of this Office, dated July 12, 1973, authored by Deputy Attorney General Joseph C. Coleman. This opinion concluded that [Section 56-5-1520 of the Code of Laws of South Carolina](#) (§ 46-361 of 1962 Code) 'requires notation of the rate of speed [on a traffic ticket] only when that speed has been clocked by speedometer or other mechanical means.'¹ It is our opinion that the foregoing opinion is correct.

The 1973 opinion stated:

A basic rule of statutory construction is that the language of any law must be given a meaning within the intent of the General Assembly, and when such language is ambiguous or unclear, facts of general public knowledge, *inter alia* may be taken into consideration in arriving at legislative intent . . . if such language considered with such facts, will support a reasonable construction.

It is well known that in most wreck cases the evidence available, although sufficient to indicate excessive speed, cannot support a finding that the subject vehicle was traveling at any particular rate of speed. The General Assembly was aware of this fact when it enacted the quoted language. It can be concluded, then, that it was not intended that the traffic officer note the rate of speed on the traffic ticket when he has no way of determining that speed. Such a construction would be that it was intended by the Legislature to require the impossible.

In other words, it must be presumed that the Legislature intended by its action to accomplish something and not do a futile thing, [McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964); to conclude that the General Assembly intended by the proviso in question to require that every traffic citation for driving too fast for conditions where a wreck had occurred contain the precise speed, even if that speed could not be reasonably obtained, would, in our view, attribute to the Legislature a futile act.

Moreover, we believe it is at least questionable whether the proviso under consideration even relates to [§ 56-5-1520\(a\)](#), which prohibits driving too fast for conditions. Such a construction that the proviso is inapplicable to subsection (a) is consistent with the rule that provisos are to be strictly construed. Sutherland, [Statutory Construction](#), § 47.08 (3d ed. 1973); 73 Am.Jur.2d, [Statutes](#), § 319. Moreover, it is presumed 'that a proviso in a statute refers only to the provision to which it is attached, and, as a general rule, a proviso is deemed to apply only to the immediately preceding clause or provision unless the legislative

intent strongly suggests that the proviso relates to the statute as a whole.’ 73 Am.Jur.2d, Statutes, § 320. As our Supreme Court has stated,

*2 The natural and appropriate office of a proviso is to modify the operation of that statute immediately preceding the proviso, or to restrain or qualify the generality of the language that it follows.

[Cain v. South Carolina Public Service Authority](#), 222 S.C. 200, 213, 72 S.E.2d 177 (1952), quoting 50 Am.Jur., Statutes, § 348.

Based upon these rules of construction, a good argument can be made that the proviso requiring the office to note the speed upon the citation ‘for violating the speed limits’ does not relate at all to the driving too fast for conditions provision contained in § 56–5–1520(a).² That proviso immediately follows the section enumerating the various penalties ‘for violating the speed limits herein established.’ Those penalties listed each relate to driving in excess of the posted speed limits, specifically set forth in § 56–5–1520(b).³ Moreover, the provision enumerating those penalties, as well as the proviso itself were enacted separately as an amendment to § 56–5–1520, to be placed ‘at the end thereof.’ See, Act No. 1069 of 1970. Thus, the fact that it is doubtful that the proviso at the end of § 56–5–1520(c) was meant to apply to subsection (a) lends further support to the conclusion expressed in the 1973 opinion.

Moreover, it is worthy of note that the opinion was issued in 1973 and published thereafter, yet the General Assembly has not seen fit to amend the statute or alter the conclusion stated in the opinion since that time. It is well recognized that the absence of any amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. [Scheff v. Township of Maple Shade](#), 149 N.J. Super. 448, 374 A.2d 43 (1977).

Accordingly, we believe, as the 1973 opinion concluded, that the General Assembly did not intend § 56–5–1520 to require the officer to note the rate of speed on the citation except when that speed has been clocked by speedometer or other mechanical means. Of course, as a matter of caution, legislative clarification may be desirable.

If we can be of further assistance, please let us know. With kindest personal regards, I remain
Very truly yours,

T. Travis Medlock
Attorney General

Footnotes

- 1 The issue arose because of a proviso inserted at the very end of § 56–5–1520, which reads as follows:
Provided, that any citation for violating the speed limits issued by any authorized officer shall note thereon the rate of speed for which such citation is issued.
- 2 [Section 56–5–1520\(a\)](#) provides:
(a) General rule.—No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.
- 3 [Section 56–5–1520\(b\)](#) sets forth certain maximum speed limits for various situations. The introductory provision to subsection (b) states:
—Except when a special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway in excess of such maximum limits.

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